

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

March 16, 2007

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Opinion

Case Name: Personnel Security Hearing

Date of Filing: July 15, 2005

Case Number: TSO-0264

This Decision concerns the eligibility of XXXXXXXXXXXX (the individual) to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." A Department of Energy (DOE) Operations Office suspended the individual's access authorization under the provisions of Part 710. This decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in this decision, I have determined that the individual's access authorization should not be restored at this time.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

DOE granted the individual an access authorization many years ago after she gained employment with a DOE contractor. During a background investigation in response to the individual's employer's request to upgrade her level of access authorization, the local DOE security office (DOE Security) uncovered derogatory information concerning financial matters that it was unable to resolve through a December 2004 Personnel Security Interview (PSI). Consequently, it initiated formal administrative review

proceedings. In a Notification Letter issued to the individual on May 13, 2005, DOE Security stated that it was suspending the individual's access authorization pending the resolution of certain derogatory information that falls within the purview of Criterion L.¹

Upon receipt of the Notification Letter, the individual exercised her right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On July 20, 2005, the Director of the Office of Hearings and Appeals appointed me the hearing officer in this case. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, I established a hearing date. At the hearing, the DOE Counsel called no witnesses. The individual testified on her own behalf, and called as witnesses two supervisors and a friend. The transcript taken at the hearing will be hereinafter cited as "Tr." Documents that were submitted by the DOE Counsel and the individual will be cited as "DOE Exh." and "Indiv. Exh.," respectively.

The Notification Letter and the Security Concerns at Issue

In the Notification Letter, DOE Security set forth its concerns regarding the individual's eligibility for access authorization and the facts that underlie these concerns. It alleged that the individual has established a pattern of deliberate financial irresponsibility that demonstrated that she was not honest, trustworthy or reliable and that she could be subject to pressure or duress that might cause her not to safeguard classified material properly. According to DOE Security, her credit purchases of jewelry, clothing and shoes caused her to file for Chapter 7 bankruptcy, a process that was completed in 1990. Though she intended never to use credit cards again, by 2000 she had accumulated \$18,000 in credit card debt, for purchases of primarily personal items such as jewelry, clothing and shoes. In 2000 she obtained a loan to pay off her credit card debt and apparently did so. After about a year, she began using her credit cards again to purchase personal items. She again fell behind on her monthly credit card payments, stopped making payments to many of her creditors, and incurred other debts as well.

According to DOE Security, at the time the Notification Letter was issued, the individual was about \$56,000 in debt, of which about \$24,000 had been either "charged off" (determined never to be repaid) by her creditors or turned over to collection agents. Most of this debt resulted from the purchases of jewelry, clothing and shoes, though a portion can be attributed to the purchase of an automobile and the accrual of back taxes owed to federal and state governments. DOE Security believed that the individual had no intention of satisfying most of these debts, because she had expressed her belief that a statute of limitations absolved her of her debts every seven years. She had also admitted that shopping is her "vice," and that she makes purchases beyond her means.

¹ Criterion L relates, in relevant part, to information that a person "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. . . ." 10 C.F.R. § 710.8(l).

I have concluded that DOE Security correctly invoked Criterion L in this case. Her pattern of financial irresponsibility could render her subject to pressure, coercion, blackmail or duress from a person who might offer to resolve her debts in exchange for access to classified materials. In addition, “[f]ailure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.” *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005), Guideline F(18).

II. Findings of Fact

The facts in this case are essentially uncontroverted. The individual lives with her parents in their home. She is not responsible for mortgage, utilities or tax payments on the property. Nevertheless, over the years, she has voluntarily contributed to those expenses as well as the household costs of maintenance, repairs, and replacement of home appliances on an as-needed basis. Tr. at 102-03, 109-10; DOE Exh. 15 (Transcript of December 2004 PSI) at 33-34.

In her PSI and at the hearing, the individual explained in detail her financial status and the history that brought her to this juncture. When she first sought access authorization, she had no debt, but acknowledged her 1990 bankruptcy and told DOE Security that she intended never to use credit cards again. See DOE Exh. 14 (1993 Questionnaire). She testified that she did not use credit cards for several years after 1990. Tr. at 57. At some point after 1993, however, she began using credit cards again. DOE Exh. 15 at 55. Her recollection was that she felt more confident about her abilities to handle money and had secured a better paying job. Tr. at 57.

By 2000, however, her consumer debt had mounted to \$18,000. She eliminated her credit card debt by taking out a loan for \$18,000. Roughly a year later, she was making purchases again by credit card. DOE Exh. 15 at 45. Shortly after that, she realized that the debt she had amassed was “just so overwhelming.” *Id.* at 23. She stopped paying her credit card bills after consulting a friend who is a financial planner, who advised her that it would not be worth her while to attempt to pay them. *Id.* Instead, she kept current on the necessary bills, such as her automobile loan and insurance. *Id.* at 22.

At the PSI, the individual learned for the first time that DOE Security considers her charged off debts to be security concerns, along with her current debts. DOE Exh. 15 at 16. In addition, the individual revealed that her friend, the financial planner, had told her that it would not be worthwhile to pay the charged off debts, because the payments would not improve her credit score. *Id.*

In January 2005, the individual sought help from a consumer credit counseling service. That service issued her a letter outlining her options for reducing her debt. See Individ. Exh. C. The letter proposed a debt management plan that consolidated all the outstanding

debts into a single monthly payment, as well as other solutions, such as taking consumer education classes, selling assets, obtaining another consolidation loan, and handling the debts on her own. *Id.*; see Tr. at 85-86. Nevertheless, the individual maintains that a counselor told her orally that she should not enroll in the debt management plan because it would not work for her; her debts were simply too large. Tr. at 88-89.² She also objected to the counseling service's approach to consolidating debts into a debt management plan, because she believed the service did not negotiate the amount owed with each creditor, but rather accepted the creditor's figure and, moreover, included fees and charges (such as those for late payment and collection agency services) as part of the debt to be paid. Thus, the counseling service's calculation of debt owed was far greater than the debt she originally incurred, and she felt that was inappropriate. Tr. at 73. Instead, the individual instituted her own plan for repaying her debt, which began with negotiating the amount of debt with each creditor. Tr. at 92. The hurdle she has faced is that apparently creditors will negotiate with her only if she will commit to begin paying them immediately. Tr. at 93. As a result, she is planning to pay off each creditor sequentially. *Id.*

The individual has presented a considerable amount of evidence that augurs in her favor. As a general matter, I am absolutely convinced of the individual's honesty. She appears to have dealt with DOE Security consistently in a straightforward manner. In addition, the witnesses who testified on her behalf spoke of her honest and dependable character. Finally, my observation of the individual's demeanor throughout this administrative review process confirms my opinion of her honest nature, and I therefore accept her representations of facts as credible.

The individual reports that she is current on two loans, one for the purchase of her automobile, the other for the 2000 consolidation of her outstanding credit card debt, and she provided evidence of her currency in a post-hearing submission dated October 27, 2005. She also testified that she is up to date on her monthly payments for car insurance and phone service. She also provided evidence that she is current on her payments to the Internal Revenue Service, has corrected the error that resulted in the underpayment to the IRS in the first place, and has entered into a payment schedule agreement to pay off her tax-related debt to the state. *Indiv. Post-Hearing Submission.*

The individual is complying with her self-imposed plan for eliminating her outstanding debts. She is currently paying off the first of her old credit card balances at the rate of \$100 per month. Tr. at 94. She calculates that she will have paid off all of her old credit card debt in about three years. Tr. at 139. She testified that she now has no credit cards, except for a government-issued credit card that she uses strictly for business-related travel expenses. Tr. at 116. In sum, she appears to be spending less than she is earning, and therefore incurring no additional debt.

Finally, it appears that the individual has been the recipient of bad advice, upon which she relied. Her discussions with her friend, the financial planner, led her to believe there

² The individual also stated at the hearing that the credit counseling service told her she was not eligible for its services. Tr. at 83-84. There is no evidence that supports this statement.

was no benefit in attempting to address her many old debts that her creditors had charged off. Although her explanations for her understanding have differed—in some instances she has stated that she was told a statute of limitations would eliminate the debts after seven years, in others she has stated her belief that any payments on charged off accounts would not be recorded and therefore would not be to her benefit—it is clear that she believed she was being advised to ignore the debts. She also appears to have been misled at the credit counseling service, where a letter advised her in writing that a debt management plan could help her but a counselor told her orally not to enter into the plan. In any event, the individual appears not to have been aware, until her PSI, that DOE Security's concern about her financial situation includes failure to resolve charged off debts as well as current ones.

III. Analysis

A hearing is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information that raises security concerns, the burden is on the individual to come forward with evidence to convince the DOE that granting or restoring his access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against granting or restoring access authorization. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for the granting of access authorizations indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issue of an access authorization).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored, because I am unable to conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings I make in support of this determination are discussed below.

The individual currently faces a staggering amount of debt. She clearly recognizes that her debt poses a problem, not only to DOE Security but on a personal level as well. She has undertaken a number of positive steps to address this problem: she has stopped using credit cards, she has incurred no new debt recently, she has begun paying off old debts

according to a system of her own devising, and she has entered into agreements with federal and state taxing authorities to repay back taxes. Unfortunately, at the time of the hearing, her outstanding debt amounted to about \$56,000, and she anticipated that it would not be paid off for at least three years.

The individual's repayment plan, while admirable, reflects a frame of mind that does not serve her well in the predicament she finds herself. At the hearing, we determined that she had between \$800 and \$1400 a month available, after paying all monthly bills. Because non-invoiced expenses, such as food, gas, and unforeseen repairs and assistance to her parents, needed to be paid out of that amount, the entire amount could not be dedicated to reducing her debt. Nevertheless, she was paying only \$100 a month to the first of her old creditors. She was unwilling to dedicate a significant portion of her discretionary income to reducing her debt. She testified that she hesitated to commit to larger monthly payments, such as those that a debt management plan or another consolidation loan would require, because a large, unforeseen expense in one month might make it impossible for her to meet her monthly payment, and she would fall into arrears. Tr. at 105-08. The individual has stated, however, that her siblings have offered to lend her money and she has refused the offer. See Tr. at 134. While her determination to solve her problem on her own is admirable, her unwillingness to accept help has contributed to her predicament. If she were willing to accept help from her family in the event of the unforeseen expense she fears, she would be able to devote larger amounts of her discretionary income to reducing her debt.

Her lack of commitment, whether based on fear or on stubbornness, is further illustrated by this example. The individual appears to have rejected the debt management plan the credit counseling service proposed, at least in part, because it included late fees and collection agency charges in its calculation of indebtedness. At the hearing, she testified that she had learned through research that other credit counseling services existed and that they might have different philosophies and calculation methods. Tr. at 141. Nevertheless, she was unwilling to approach any of them until she had paid off her automobile loan. *Id.*

Other concerns arise from the long period of the individual's indebtedness and the behavior patterns that led her there. After her 1990 bankruptcy, the individual renounced the use of credit cards and remained debt-free for several years. Nevertheless, by 2000 she had accumulated \$18,000 of credit card debt. Forswearing credit cards again in 2000, she began using them again in 2001, and stopped using them again in 2003. At the PSI she stated, "... the thing is I can't have credit cards. . . [T]he best thing for me is just not to have them." DOE Exh. 15 at 49. She also admitted that she spends her money on clothes and other personal items, but "I'm just trying to get out of it and try not to be like that." *Id.* at 46. Although she has taken some positive steps to remedy her situation, I must also consider that the bulk of her indebtedness arose from discretionary, personal purchases rather than, for example, medical exigencies, a pattern of purchasing that she has followed for most of her adult life.

The question before me then is whether the individual has produced sufficient evidence to permit me to conclude that her current financial situation, the poor judgment she employed in reaching this juncture, and the degree to which it renders her vulnerable to pressure, coercion, exploitation or duress, pose no more than an acceptable risk to the national security. *See* Guideline F; Criterion L. The individual's pattern of financial irresponsibility in the past certainly raises concerns for her judgment and vulnerability to exploitation. In prior cases, we have held that "[o]nce an individual has demonstrated a pattern of financial irresponsibility, he must demonstrate a new, sustained pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely." *Personnel Security Hearing, Case No. TSO-0194*, 29 DOE ¶ 82,881 at 86,135 (2005), *citing Personnel Security Hearing, Case No. VSO-0108*, 26 DOE ¶ 82,764 at 85,699 (1996). In the present case, the individual's pattern of financial irresponsibility began with accumulated debt that caused her to file for bankruptcy in 1990. Her self-imposed plan to refrain from using credit cards after her bankruptcy filing did not remain in effect for long. Beginning sometime after 1993 and continuing through 2003, the individual's debts mounted. Since 2003 she has not incurred new debt but is struggling to satisfy her old debt. Currently, her debt exceeds her assets. While she has a modest plan in place to pay her creditors over time, her recent pattern of financial responsibility is too short-lived to convince me that she will not revert to her old spending habits and poor judgment if and when she satisfies her old debt. Moreover, as long as her indebtedness plagues her, the individual's financial condition raises legitimate concerns for DOE Security, as it leaves her vulnerable to pressure or exploitation from those who might assist her financially in exchange for access to classified information. While I find that she is an honest and straightforward person, I cannot conclude that the vulnerability caused by her current financial state represents an acceptable risk to the national security. I have therefore concluded that the individual has not sufficiently mitigated this security concern under Criterion L.

IV. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. § 710.8 (l) in suspending the individual's access authorization. For the reasons I have described above, I find that the individual has not sufficiently mitigated all of the specified security concerns. I therefore do not find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the provisions set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: March 16, 2007